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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

VALER V. SECAREA, JR.,

Plaintiff and Appellant,

v.

REGENTS OF THE UNIVERSITY OF  
CALIFORNIA et al.,

Defendants and Respondents.

G037651

(Super. Ct. No. 05CC10019)

ORDER MODIFYING OPINION  
AND DENYING PETITION  
FOR REHEARING; NO  
CHANGE IN JUDGMENT

It is ordered that the opinion filed herein on November 20, 2008, be modified as follows:

On page 8, at the conclusion of the first full paragraph, after the sentence ending with “deem the argument waived,” add as footnote 5 the following footnote, which will require renumbering of the subsequent footnote:

<sup>5</sup>Of course, plaintiff’s failure to raise the issue in opposition to Irvine Regional’s summary judgment motion does not foreclose plaintiff from raising the issue in future proceedings, including trial.

On page 10, delete the second sentence of the third paragraph which begins “Plaintiff, however, never filed any objections to Natale’s declaration” and replace it with the following sentences:

Plaintiff, however, never raised this objection either in writing or orally at the summary judgment hearing. Plaintiff asserts the trial court refused to allow any evidentiary objections during oral argument, thus preventing the issue from being raised. Not so. A review of the hearing transcript reveals the trial court gave plaintiff’s counsel substantial time to argue all of the points he desired before ruling. Indeed, after extensive argument and discussion, the court told counsel “I’ll give you the last bite of the apple . . . .” Later, the court invited counsel: “[I]f you want to make a record, I’ll be more than happy to let you do so.” Yet counsel remained silent regarding any defects in the Natale declaration. After the trial court had ruled on the summary judgment motion, defendants’ noted that plaintiff may appeal the ruling and asked the court to rule on their previously filed evidentiary objections. After complying with defendant’s request, plaintiff’s counsel stated: “Your honor, would it be, at this point, that we can argue the evidentiary objections?” The court responded: “I don’t argue evidentiary objections. I just go ahead and read the paperwork, look at the objections and rule on them, so — because otherwise, we have speaking objections, and I don’t do that.” Significantly, plaintiff’s counsel requested the opportunity to *argue* objections, and never informed the court he wished to make new objections. Because plaintiff failed to raise the defect in the Natale declaration in the trial court, we conclude plaintiff failed to preserve this issue for appeal.

This modification does not change the judgment. The petition for rehearing is DENIED.

ARONSON, J.

WE CONCUR:

BEDSWORTH, ACTING, P. J.

IKOLA, J.